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SUBJECT: Update on Investment Issues Facing U.S. Companies  
in Turkey

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(E) Ankara 342

Summary

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1. (SBU) Following up on the Ambassador's recent meetings with economy ministers, the Embassy has pressed GOT authorities hard to resolve the numerous disputes involving U.S. companies. We have stressed that progress in these cases will help make the Prime Minister's visit to Washington a success, and will allow him to showcase Turkey as an investment destination before America's private sector. Based on follow-on meetings with Industry, Finance and Treasury officials, it appears that the Cargill zoning problem has the best chance of being resolved, possibly before the PM visit. The GOT may also address data exclusivity in the near term, possibly on terms which will be unacceptable to U.S. industry and the USG. End Summary.

2. (SBU) The Ambassador raised investment problems in recent meetings with the Prime Minister, as well as the Ministers of Economy, Finance and Industry (refs A, B and C). In early January meetings, Econ Counselor and Econoff raised these issues with Treasury Undersecretary Canakci, Industry Ministry Undersecretary Adem Sahin, Finance Ministry advisor Halit Ocal, Treasury Deputy Director General for Foreign Investment Osman Emed and Ak MP Reha Denemec. We suggested that the Prime Minister's upcoming visit to Washington, combined with the scheduled mid-March Investor Conference and the June NATO Summit, presented Turkey with great opportunities to showcase its economic reforms and improved investment environment. We argued that turning some of the FDI problem cases into success stories during this period would go a long way toward changing investor perceptions about Turkey.

Cargill

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3. (SBU) We pressed GOT interlocutors to expedite passage of an industrial zones law which would remedy Cargill's zoning problem. Sahin and Ocal told us that the Industry Ministry had almost completed the process of obtaining clearances from other state bodies on a new industrial zones law which should completely address the problem associated with siting Cargill's Orhangazi plant on land zoned for agricultural use. Emed stated that there was unanimity within the GOT on the need to approve this legislation. FM Unakitan told the Ambassador January 16 that Parliament would soon pass the industrial zones law (ref E).

Data Exclusivity

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4. (SBU) We stressed the importance of swiftly implementing data exclusivity protection for pharmaceuticals, and sought to debunk arguments by the generic industry that this policy would significantly increase health care spending. Sahin and Ocal told us that the GOT was considering a "compromise" which would implement data exclusivity only in 2006 or 2007. Embassy responded that implementation six or seven years after the deadline in the TRIPS agreement was not acceptable. Ak MP Reha Denemec told us separately that the GOT would implement data exclusivity, but with the protection period starting off very limited (two or three

years) and gradually increasing.

15. (SBU) In a separate meeting, Turkish Industrialists and Businessmen's Association (TUSIAD) Ankara Representative Zafer Ali Yavan told Econoff that TUSIAD, which has both generic and research-based company members, would try to facilitate a compromise acceptable to both sides and would draft a report for the GOT on this issue in the next several weeks.

#### Energy Projects

16. (SBU) Econ Counselor stressed the need to come to a satisfactory resolution of the dispute between the Energy Ministry and energy build-operate-transfer (BOT) companies over pricing and licensing. While we understood the GOT's desire to lower energy prices, harassing and pressuring companies with legitimate contracts was of serious concern to us, and would make it hard for Turkey to attract new investment into the sector. We stressed that the government needed to grant operating licenses to these companies, and that any discussions on tariff reductions should be done fairly, respectfully, and in a manner that enhanced investor perceptions of Turkey's investment environment. Ocal responded that he would relate our position to the Finance Minister, who would likely call the Energy and Natural Resources Minister on this issue (septel).

#### Bedoian Hotel Investment

17. (SBU) We raised the fact that the various court cases of Victor and Kristy Bedoian, who have been unable to operate a hotel they renovated in Van for several years, have moved extremely slowly. Embassy underlined its interest in a fair outcome in these cases. Ocal, who seemed to be well-informed on this, told us he would recommend that the Finance Minister weigh in with the Justice Minister to ask that the administrative courts render a fair and speedy decision in the administrative court cases on the Bedoians' residency and operating permits. The Ambassador also raised this case with the Interior Minister.

#### Cola tax

18. (SBU) We told Ocal that we recognized the difficulty of lowering any taxes during the current period of belt-tightening, but related that the industry believes a lower tax rate on cola products (currently over 47 percent) might more than compensate the budget through higher sales. Ocal said the Ministry was sympathetic to the cola industry's arguments, but that a tax reduction would be hard to contemplate in the near term.

#### Motorola

19. (SBU) Embassy asked interlocutors to make their best efforts in the Motorola-Telsim case. We noted that, as the Government decides how to handle the complicated legal and debt issues related to the Uzan Group (which owes billions to the State because of the failure of Imar Bank), it should keep in mind the tremendous impact of the case on foreign investor perceptions, and seek a resolution that provides fair treatment to Motorola.

110. (SBU) Industry U/S Sahin said that, following Ambassador's discussion of these issues with Minister Coskun, the Minister had taken it upon himself to coordinate an interagency discussion of these cases. Halit Ocal similarly said Finance Minister Unakitan was seized with resolving these problems, and had tasked him specifically with investigating the facts with other agencies and with the Embassy. Canakci was more reserved, but took note of our presentation. Reha Denemec predicted the GOT would resolve the problem, but added that resolution would require some changes in the Telecommunications Authority Board, which would have to approve a possible takeover of Telsim.

#### Comment and Recommendation

11. (SBU) The GOT has long been sympathetic to Cargill with respect to its zoning problem. A legislative remedy is well on its way, with concrete steps possible before the PM visit. A GOT announcement on data exclusivity may also come in the near term, though it may contain an unacceptably lengthy transition period (ref D). We are somewhat encouraged by the fact that the Finance Minister's advisor has taken an interest in the Bedoian case, and that the Industry and Finance Ministers are focused on solving the range of investment problems facing U.S. companies.

12. (SBU) Embassy understands that USG interlocutors will raise unresolved investment issues during bilaterals with the PM's delegation in Washington. We should also use the trade experts visit, promised at the December 2003 Economic Partnership Commission and scheduled to take place in the first quarter of 2004, as a vehicle to promote resolution of investment problems.  
Edelman